IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6151 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MUKESH SEVABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6151 of 2002

MR BP GUPTA for Petitioner No. 1

MR ANIL V GUPTA for Petitioner No. 1

MR A.Y.KOGJE AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 05/08/2002

ORAL JUDGEMENT

#. By way of this petition under Article 226 of the Constitution of India the petitioner detenu has challenged the legality and validity of the order of

detention dated 10.4.2002 passed by the Police Commissioner, Ahmedabad City, Ahmedabad again him in exercise of the powers conferred on him by section 3(2) of the Gujarat Prevention of Anti-Social Activities Act 1985 (hereinafter referred to as the PASA Act). The petitioner has been branded as a bootlegger within the meaning of section 2(b) of the PASA Act.

#. Heard Mr. Anil V.Gupta learned counsel for the petitioner and Mr. A.Y.Kogje learned AGP for the respondents.

#. The grounds of detention have been served on the petitioner along with the order of detention.

#. The detaining authority while recording subjective satisfaction considered registration of 2 different offences punishable under Bombay Prohibition Act. First offence was registered with Prohibition Police Station (West) against the petitioner on 27.2.2002 for the offence punishable under sections 66(1) A, 65 A-E and 116-B. The second offence was registered with Naranpura Police Station against the petitioner on 25.3.2002 for the offence punishable under sections 66(1)-B, 65 A-E and 81. In the first offence the petitioner was not arrested but he was arrested fori the second offence on 4.2.2002. In the first incident 119 bottles of India made foreign liquor were seized and in the second offence 14 such bottles were seized with some quantity of bear. The detaining authority has placed reliance also on the statement of secret witnesses wherein they have narrated the activities of the petitioner as a bootlegger and also about his head strong behavior with the members of public. The statements of these witnesses came to be recorded by the sponsoring authority on 5.4.2002 and 6.4.2002 respectively and these statements were verified by the Commissioner of Police , Ahmedabad City, Ahmedabad i.e. the detaining authority on 9.4.2002 and on the next day i.e. 10.4.2002 the order of detention under challenge came to be passed.

#. It is submitted by the learned counsel for the petitioner that the petitioner has been wrongly branded as a bootlegger and his activities cannot be said to be prejudicial to public order. For the sake of argument it is accepted that he has involved in both these offences, even then, both these acts individually can be said to be prejudicial to the maintenance of law and order and not public order. The second point advanced by the learned counsel for the petitioner is that the order of detention under challenge has been passed mechanically without

proper application of mind in view of the ratio of the decision in the case of Kalidas C. Kahar vs. State of Gujarat reported in 1993(2) GLR 1659

#. In response to the query raised by the court Mr. Kogje LAGP has fairly submitted that this petitioner should have been apprehended exercising power under section 3 of the PASA Act immediately after registration of offences by the detaining authority. However, the detaining authority has placed reliance also on the statements of two witnesses recorded. Thus it appears that haste has been made by the authority in passing the order on the next day on which the statements of witnesses were verified.

#. Involvement of the petitioner in such 2 criminal cases only cannot be equated with the activity prejudicial to the maintenance of public order. So the subjective satisfaction recorded by the detaining authority vitiates the order of detention and therefore, there was no scope for the detaining authority to exercise the power under section 3 of the PASA Act. So the order of detention is required to be turned down.

#. For the reasons aforesaid, this petition is allowed. The impugned order of detention dated 10.4.2002 passed by the Police Commissioner, Ahmedabad City, Ahmedabad against the petitioner detenu is hereby quashed and set aside. The petitioner detenu Mukesh Shivabhai Parmar is ordered to be set at liberty forth with if he is not required to be detained in any other cases. Rule is made absolute. Direct Service.

(C.K.Buch-J)

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